THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2007-0012, Erika Rock v. Gary J. Michaels, the court on December 7, 2007, issued the following order:

The respondent, Gary J. Michaels, appeals a protective order issued by the trial court pursuant to RSA 633:3-a. He argues that the trial court erred in concluding that he engaged in a course of conduct directed at the victim that reasonably placed her in fear for her personal safety. We affirm.

On appeal, we review challenges to the sufficiency of evidence as a matter of law and uphold the findings and rulings of the trial court unless they are lacking in evidential support or tainted by error of law. Fisher v. Minichiello, 155 N.H. 188, 190 (2007). We accord considerable weight to the trial court's judgments on the credibility of witnesses and the weight to be given testimony. Id. We view the evidence in the light most favorable to the petitioner. Id. Under RSA 633:3-a, a person who has filed a civil stalking petition must prove stalking by a preponderance of the evidence. Id.

The evidence in this case included that the petitioner and respondent had had a business relationship which ended after the respondent asked the petitioner for a date and she declined. The petitioner believed that the parties remained friends. Shortly thereafter, the respondent called the petitioner at 2 a.m. to advise her that he was aware that she no longer maintained an office at the facility she had previously used. Several weeks later, in early August, the petitioner called the respondent to inquire if he had any apartments available. The respondent offered to buy a condominium and charge her the amount of the mortgage payment as rent; he also offered to let her move into his home, stating that if she did so, he would stop dating. After she declined, he left a message stating, "I guess I know where I stand with you, you would rather live in a shit hole than come and live with me."

On August 16, the petitioner found that her car had been vandalized; her neighbor reported seeing a man walking away from it who drove a silver SUV. The petitioner testified that the respondent drove a silver SUV. A few days later, the petitioner observed the respondent drive into her driveway, stay there for a period of time and then drive away. Within a few moments, he came back and drove by her house very slowly. The petitioner and her neighbor went to stand at the end of the driveway; when he approached for the third time and saw two people standing at the end of the driveway, he pulled into a neighboring driveway and sat there without acknowledging her. Two days later, she saw him twice near her home. When she arrived home later, she found that it had been

vandalized. She reported this to the police. A few weeks later, she spoke to a woman who advised her that the respondent had asked the woman to call the petitioner and tell her that he had vandalized her home. She reported this to the police. She later received a phone call; she identified the caller as the respondent from his voice. The respondent left a message for her boyfriend telling him that if he didn't take certain action, what had happened three weeks earlier would get a lot worse. The respondent was also subsequently charged with criminal solicitation after causing a false claim to be filed against the petitioner.

The respondent devotes much of his brief to arguing that the trial court gave undue weight to "benign, unrelated . . . amorphous or wholly unreliable" evidence. The trial court had the benefit of observing the witnesses and assessing their credibility. See id. Based upon the record before us, we conclude that the evidence supported the trial court's finding that the respondent engaged in a course of conduct targeted at the petitioner which reasonably caused the petitioner to fear for her safety. That the petitioner did not specifically testify that she was placed in fear was not required in this case where she testified to a course of conduct on the part of the respondent that culminated in her filing a report with the police. See, e.g., State v. Mills, 136 N.H. 46, 50 (1992) (supreme court will not require "magic words" be uttered in case where evidence sufficient to support trial court's ruling).

Affirmed.

DUGGAN, GALWAY and HICKS, JJ., concurred.

Eileen Fox,
Clerk